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Off the Record

BY A. H. WHITE*

(Continued from the November issue)

VI.

Justice Tully Scott was on the supreme court bench when Mr. Donald C. McCreery was being orally examined for admission to the bar. Judge Scott questioned the applicant something like this:

Scott: Mr. McCreery, what is the purpose of a demurrer?

McCreery: Usually delay. (All present smiled, including the members of the court.)

Scott: You are the son of the late James C. McCreery, a leading member of the Weld county bar, who had such a prominent part in establishing the irrigation laws of our state, are you not?

McCreery, meekly: Yes, sir.

Scott: That is all.

Mr. McCreery got the highest grades in his class on the entrance examinations.

From about 1900 to 1910, Justice Ben C. Hilliard enjoyed quite a large practice among the farmers in the prosperous section around Elizabeth. At one term of court one of his farmer clients came to Judge Hilliard and wanted the judge to defend his son, charged with some criminal offense. Judge Hilliard readily admitted that he was no expert in criminal law, yet he had to defend the young man, so he went to Mr. John F. Mail, doubtless attending court on some tax title matters. Mr. Mail had had no more experience in criminal practice than had Judge Hilliard, but he readily consented to help so far as he could. Mr. Mail took the task of examining the jury:

Q. What is your name? A. My name is Albert Wilson.

Q. How long have you lived in the community, Mr. Wilson?

A. Ever since the panic. (Meaning, of course, the panic of 1893.)

Mr. Mail: Mr. Wilson, you will have to be more specific. Every year is a panic with me.

Mr. Mail was also an interesting character. He came West after being admitted to the Indiana bar and settled at Rock Springs, Wyoming, but did not readily get established there, so came to Denver.

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About that time much of the land in eastern Colorado had been entered by homesteaders in the late 'eighties or early 'nineties, and later abandoned. The settlers just moved away and the homesteads were all sold for taxes. It was the practice of the boards of county commissioners to sell the tax sale certificates for \$75.00 a quarter section, so that the land would get back on the tax rolls. Mr. Mail became an expert on tax title matters and probably brought several hundred suits to quiet titles. He had all the rulings down in his memory. Judge Burke was on the district court bench in the thirteenth district and was hearing some of these cases. Mr. Mail presented his evidence in one case, when the court said, "Mr. Mail, you are wrong. I don't think you have made your case and unless you can amend your complaint, it will be dismissed." Mr. Mail replied, "All right, your Honor, all right, and if you will just hold to that ruling I'll win the next case I have to present."

When Mr. Mail made his last argument before the supreme court he was very ill. The court suggested that he be seated during his argument. Mr. Mail, holding on to the desk, said, "No, no thank you. My head is working, but I'm just tired."

When he returned to the clerk's office a friend asked the privilege of taking him downtown in his car. Mr. Mail asked if he was going downtown anyway, and the friend said he was not but that he would like to take Mr. Mail to his office. "Thank you," said Mr. Mail, "but I won't let you do anything of the kind. I can make it." He truly died in the harness.

VII.

Mr. James D. Pilcher was a real country lawyer, and a pretty forceful one, too. He could speak the language of the farmer and enjoyed quite a practice at Monte Vista. Mr. James P. Veerkamp, a lawyer of the same type, was usually the opposing counsel, but not in the case below related.

One of Mr. Pilcher's clients shipped about a thousand sheep from Santa Fe to Antonito over the "Chili Route" or the "Pinon Line," as that section of the Rio Grande railroad was called locally. About half of the sheep died en route and the shipper sued the company, charging the loss was due to ill treatment in transit. Judge George A. Luxford was defending. In addressing the jury, Mr. Pilcher really had a good time. Here is a portion of his argument, taken from the record:

After abusing the railroad's counsel, as well as the company's witnesses, he went into high gear, saying, "* * * and when they talk

about fairness they hadn't ought to be permitted to use the word in a court room or anywhere else; they have no more idea of the truth than did the scarlet woman of Babylon have of the immaculate conception." He continued, saying, "I tell you, gentlemen of the jury, Oscar Lord might well say: 'I had rather be on a ship of rock, on a sea of blood, with iron sails and leaden oars, and the wrath of an avenging God for a gale, and Hell my nearest port, and still expect to land on Canaan's happy shores rather than to expect justice from the Denver and Rio Grande Railroad Company'."

Judge Luxford was entering his objections whenever he could get a word in, but the verdict and judgment were for the plaintiff and Judge Luxford had to appeal the case to get relief. The judgment was set aside by the supreme court because of the above and similar remarks, as well as other irregularities.

I don't remember the parties to which this story is attached, but two attorneys over in the valley—Alamosa, I believe—entered into a law partnership which didn't last but a short time. One of the attorneys was met by a friend, who asked why the partnership had been dissolved. He replied, "Well, we were both disappointed. It didn't just work out. I thought he knew some law and he thought I had some money."

In 1883 the Colorado legislature elected two United States Senators, Bowen and Tabor. The practice then was to elect your friends to the legislature, who in turn would vote for you for the senate.

Alamosa was a thriving town then, the gateway to the great San Juan section, and a joint debate was held there as was popular in political campaigns of that era. Mr. Bowen answered and in the reply his opponent closed with words something like this: "And now, Mr. Bowen, I'll meet you at Armageddon." In conference with his workers after the meeting, Mr. Bowen is said to have remarked: "Now, boys, I don't know where in hell Armageddon is, but I think we should send a couple of men over there with some money right away."

VIII.

To really appreciate this story one should know the characters mentioned. I am telling it to the older members of the bar. One spring a sleet storm visited Denver. Several prominent attorneys met with accidents. Mr. Charlie Franklin fell and broke his arm. Others met with injuries and among the number was Mr. Edmund F. Richardson,

of that old law firm of Patterson, Richardson and Hawkins. In telling of Mr. Richardson's accident at a meeting of the Denver bar, Mr. Tom O'Donnell said, "The other morning Ed Richardson was walking down Colfax Avenue beside the capitol grounds, when his feet slipped from under him and down he went with a terrible jolt. The first part of his huge body to strike the sidewalk was the back of his head, and for the first time in his life Ed lost self-consciousness."

There are many more stories of this character which might be told. The late Senator Charles S. Thomas was an artist at it. Then of the present bar, Mr. John D. Haney and Mr. David P. Strickler of El Paso County are unexcelled in their ability to tell good stories in a most pleasing and enjoyable manner, while no bar can boast of better after dinner speakers than Mr. Justice Burke and Mr. Justice Hilliard of our supreme court.

IX.

I cannot close this chronicle without a few words of a personal nature. During the time I served the court some 2,400 attorneys were admitted to the bar; 8,270 cases were docketed, and the reports increased in number from forty-five to one hundred seven. I worked under twenty-seven different justices. It would be interesting, though entirely too personal, to write of the temper and mannerism of each, all different. Nearly every one of these men served as chief justice. Individuality was very pronounced. Some sought suggestions as to practice, while others wanted to go it alone. Of course it was the duty of the clerk to assist in any way possible and to do just as the chief justice desired.

One question was always difficult: How far should a clerk go when asked by an attorney as to the rules and practice? Many questions were quite simple. If a clerk said he did not know, the natural reaction of the attorney was, "The court should have a clerk who does know." One thing is very sure. A clerk should never make a suggestion to an attorney that he would not make if opposing counsel was present. I often admonished myself, "Don't try to decide the case: the court will do that. Remember, I am only the clerk."

To the members of the bench and bar of Colorado, I want to express my appreciation of the many kindnesses and courtesies shown me through the years. It was a privilege indeed to have been associated with them. For all of the knowledge gained and the benefits bestowed upon me during the forty years I was so closely associated with them, I am profoundly grateful.

Adams Express Company vs. Aldridge

His Honor, Judge Hastely, retired from the bench
After many, many years of making decisions;
He had long listened patiently to arguments endless,
In re torts, frauds, recovery, F.E.D.'s and rescissions.

But a few years retirement found him feeble and spent
And mortally ill, confined to his bed.
The toll of the Reaper he no longer could prevent,
So to his friends and kin he bade farewell, and said:

"I have presided in court, in bad weather and good,
And times without number heard defendant's lawyers deplore
That the complaint revealed nothing—in fact was terrific—
As they argued their motions to make more specific.

" 'Pray, your Honor,' they say, 'make the plaintiff display
How my client was careless, and state exactly in what manner
and mode.

Mr. Smith was there tumbled, his viscera all jumbled;
His account is too meager, doesn't comply with the code.'

"Then plaintiff's attorney addresses the court
And declares there need be no exaction.
'Our complaint is sufficient, it tells of a tort,
And that's enough for a good cause of action.

" 'In truth and in fact, I could get by on less,
As was done in the case of the Adams Express.
The law is well stated at Page 74, Volume 20 C. A.
And directly in point on this hearing today.'

"Year in and year out, in timid tones and in bold.
They have cited that case their complaint to uphold.
No one ever read it, but all mistakenly maintained.
That I was familiar with the law it contained.

"My affairs are in order, my last will covers all:
I've left nothing undone except one, that I recall:
In this darkest moment, I am forced to confess,
Never have I read the case of the Adams Express."

—Anonymous.

Judge Phillips Appoints Committee to Consider J. P. and Traffic Court Problems

United States Circuit Court Judge Orie L. Phillips, chairman of the section on judicial administration of the American Bar Association, announces the appointment of two new committees to cooperate with the Junior Bar Conference campaign to improve the nation's traffic courts. This action is calculated to direct the attention of the leading federal and state court judges to the war and post-war problems confronting the many courts having jurisdiction of traffic court violations.

The committee to improve traffic courts will consider the municipal traffic court problems and consists of the following: Municipal Judge Earle W. Frost, Kansas City, Missouri, chairman; Supreme Court Justice Laurance M. Hyde, Jefferson, Missouri; Municipal Judge Perry A. Frey, Cleveland; Chief Justice Joseph M. Wyatt of the Baltimore City Traffic Court; Chief Justice Harry H. Porter of the Evanston Municipal Court, and Harvey D. Booth, Chicago, secretary of the committee of traffic court judges of the National Safety Council.

The committee to improve the justice of the peace courts is under the leadership of Chief Justice Phil S. Gibson of the California Supreme Court; Municipal Judge James W. Hodson, Seattle; Justice of the Peace Irvine C. Porter, Birmingham, Alabama; Justice of the Peace Chris B. Fox, Oakland, California, and Carroll A. Mealey, New York, past president of the American Association of Motor Vehicle Administrators. Judge Hyde will also serve as co-chairman of this committee.

Judge Phillips stated that the traffic courts are the gauge by which the entire judicial system is measured by the average citizen because this is usually his only contact with courts in an entire lifetime. He further stated, "I agree with the observation recently made by Arthur T. Vanderbilt, chairman of the national committee on traffic law enforcement, when he said: 'What our fellow citizens see and hear (and in some instances, smell) in our police courts, our traffic courts, and in proceedings before our justices of the peace, quite naturally determine our ideas of American justice.' The experience, it is pointed out, all too often has led to disrespect for law as well as for judges and lawyers."